

WHAT'S YOURS IS MINE

Eminent Domain and the Flawed Public Good



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HUD: Department of Housing and Urban Development
LIHTC: Low Income Housing Tax Credits
SECTION 8: Housing Rent Vouchers
SPOT DEVELOPMENT: Intermittent and Uncoordinated housing development

W H O I S I D C

Impact Design Collaborative is a 501(c)3 nonprofit existing at the intersection of practice and research. We aim to reimagine the responsibility of designers and the built environment for everyone. Impact Design Collaborative initiates change, discovers interventions, and connects a new generation of creators.

C O P Y R I G H T

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A C K N O W L E D G E M E N T S

This research would not have been possible without the immense contributions of local, state, and national organizations who advocate for the promotion and expansion of public housing. Their development of evidence provides a foundation to inform better policy and a better future for the housing system.



An aerial, black and white photograph of a park. A wide, paved path runs diagonally across the frame. Numerous people are walking along the path, their shadows cast long and dark on the pavement. The path is flanked by lush vegetation and trees. The overall scene is captured from a high angle, looking down on the park.

"First life, then spaces,
then buildings
- the other way around
never works."

-Jan Gehl

INTRODUCTION

In lieu of the anti-racist protests and potential looting, the City of Chicago utilized its hallmark bridges to separate parts of the city from the individuals living in the city. Regardless of the intention, the capacity to occupy and exclude spaces poses a vital question: who owns the rights to a place? Property rights may set hard boundaries for what is private and what is public; however, the current legal system reveals that no space is outside the reach of government authorities. The history of governmental seizure of space, or eminent domain, is a muddled one,

filled with racial discrimination, questionable intentions, and opaque processes. The Impact Design Collaborative wants to shed light on the context of eminent domain and answer the question: is this still relevant and does it provide a common good? Understanding eminent domain in the modern age will illuminate that the spaces you believe you own, may have actually never been yours.

Eminent Domain and Its History

Eminent domain began as an inclusion in the 5th amendment of the US constitution. It was intended to give government agencies the power to acquire property to pursue the advancement of the public good. Because of the brevity of the amendment, court cases have been extremely powerful in determining the capacity and methods for eminent domain. One stipulation of eminent domain is the idea of just compensation for acquired property. Most often, governmental agencies use real estate appraisal methods to determine what just compensation is; however, litigators have argued this method is retrospective and does not account for the future value of the property or non-monetary indicators (cultural significance, impact on the community, etc.).

The first supreme court case against eminent domain was in 1867 in Kohl v. United States. The court set the precedent that eminent domain "requires no constitutional recognition; it is an attribute of sovereignty".

The Fifth Amendment

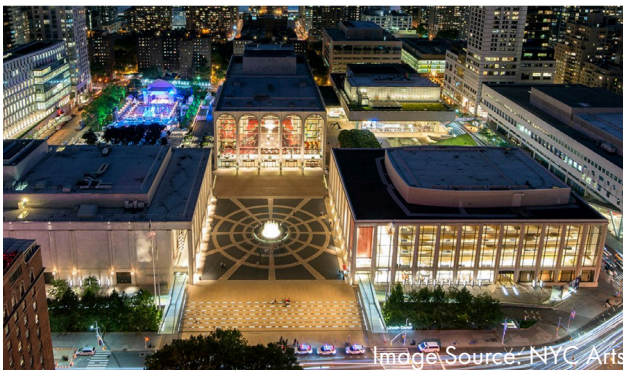
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This ambiguity has produced the concept of exclusionary eminent domain: a taking of property to disproportionately benefit one group over another [1]. While many researchers theorize the origins of gentrification begin with property values and rents, some cities have explicitly used eminent domain to extract the economic benefits of eminent domain. One recent example is Atlantic Yards in New York City, a case in which low and medium income families were displaced to make space for a skyscraper/arena project [2]. The families were compensated on the value of their homes, not the future value multiple Frank Gehry buildings would provide to Brooklyn.



Justifying the Ends Through the Means

Easily the most debated aspect of eminent domain is when the means justify the ends for public space. The idea of a common good is subjective and it often remains in the power of judges and politicians to define it. In the 1940s through 1960s, eminent domain was a crucial tool for city governments to open space for urban renewal. It led to economic expansion in the post-war era, but also created systemic racial disparities that are still observable today. The Lincoln Center, one of the most prolific architectural spaces constructed in the 20th century, solidified New York City's presence as a global cultural center at the cost of displacing more than 7,000 lower-income families and 800 businesses [3].



The new Lincoln Center is the cultural center of New York City, but many residents don't know the cost behind its making.



Detroit faced one of the largest cases of eminent domain in the taking of Poletown, which created space for GM's Factory.



This little pink house led to one of the largest supreme court cases, Kelo, in modern time and sparked a national debate.

Post-war governments extremely favored eminent domain for the idea of a better economic future, but it wasn't until 2005 that the economic justification was tested. In *Kelo v. City of New London*, the Supreme Court ruled 5-4 that the reduction of blight to promote economic growth was constitutional [4]. Dissenting judges highlighted the history of racial discrimination through eminent domain, while supporting judges referenced the public use clause of the 5th amendment. Reviewing the history of eminent domain highlights a single key question for citizens: **when are the means for public good justified?**

Measuring Eminent Domain's Consequences

Some evidence investigating the outcomes of eminent domain shed light on its efficacy as a policy. Some economic researchers have found no significant evidence that eminent domain takings expand tax revenue for local or state governments [5]; therefore, the justification of eminent domain for economic stimulation may not be credible. One study identified that eminent domain takings increased economic growth in the medium run by 0.7%, but depressed minority homeownership and employment [6]. While consensus on the economic benefits of eminent domain are still unclear, the impact on minority communities is not.

The use of eminent domain in a region can set precedent for future takings, leading to more unlitigated takings across property types.

Descriptive data determined that 58% of those impacted by eminent domain displacement are minorities and live on a median income less than \$19,000 [7]. Minority communities are more likely to live in public housing, less likely to be employed, and more likely to be displaced relative to white communities. Even more so, new evidence suggests that the use of eminent domain in a region can set precedent for future takings, leading to more unlitigated takings across property types [8]. The evidence indicates that eminent domain may be a public good for wealthy and white communities, but is a true public obstacle to minorities and the poor.



Imagining a Better Future For Eminent Domain

The story so far has shown a dark side to the implications of eminent domain; however, it is critical to understand that eminent domain is a legal tool, and not inherently flawed. Local citizens have realized it can be used for public good, when pursued democratically. Tenants in Los Angeles have rallied for the local government to acquire private housing complexes to reduce unjust increases in rent and wrongful evictions [9]. Identifying key issues with eminent domain and repurposing them for racial equity and economic growth, founded in evidence and the democratic process, could shift the narrative of its policy outcomes.

Create a National Registry of Eminent Domain Cases

One of the greatest obstacles to researching eminent domain is that most of the cases never make it to the public eye. Without a comprehensive understanding of the legal procedures and practices involved, just compensation, determination of public good, and discriminatory practices can never be investigated. Creating a registry for all court cases involving eminent domain is the first step in generating vital information for future court decisions and policy.

Develop a Framework For Measuring the Outcomes of Eminent Domain

Governments have the ability to take land under claims which never need to be validated. This not only negatively impacts the individual being subjected to eminent domain, it fails to inform governments of how successful a decision was. Creating a systematic method for understanding the consequences of a public taking better informs future use of eminent domain.

Require a Third Party to Evaluate Condemnations Before Takings

With the Kelo Decision, governments utilized the ability to condemn properties to justify eminent domain. This has gone to such an extreme that one government attempted to condemn properties for not having a two-car garage [10]. The ability of a government to both condemn and take poses a clear conflict of interest. Including a third-party to determine condemnation reduces bias decision making.

Allow Citizen-Led Initiatives For Eminent Domain Uses to Be Put to a Local Vote

Citizens have successfully lobbied against eminent domain takings, but none have ever been able to offer the decision to the electorate. Utilizing an initiative for citizens to vote on drastically improves the pursuance of public good.

Require Any Public Taking to Publish Their Methods For Just Compensation

Real estate appraisals vary widely and can lead to disagreement in transactions. Making the methods for just compensation obligatory removes exploitation of non-real estate professionals and develops a forum to evaluate best practices.

Expand Research on Racial Consequences Relating to Eminent Domain

Access to real estate and the built environment are one of the strongest ways to develop intergenerational wealth. The historical uses of eminent domain have clearly negatively impacted the advancement of racial equity. Enacting a governmental agency to investigate the long term effects of eminent domain on familial socioeconomic status is a measurable and verifiable method of reparation policy.



A powerful shift in civil discourse has occurred the past few decades. Communities are far past seeking equality under the law, and now, they demand equity within policy. While it has been a historical tool for crippling the advancement of racial equity, eminent domain could also be a potential solution for re-empowering the built environment for true and representative public good. Altering this power hierarchy and policy ecosystem is an indispensable step as the United States pursues a more equitable and just future.

SOURCES

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